

Legal 500

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Vietnam

Real Estate

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This country-specific Q&A provides an overview of real estate laws and regulations applicable in Vietnam.

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Vietnam: Real Estate

1. Overview

The real estate market is one of the cornerstones of Vietnam's economy. In the future, it has the potential to grow even larger and more significant. Real estate plays a significant role in attracting resources and creating fixed assets for the economy. In Vietnam, the real estate market has long been a promising area for foreigners seeking long-term accommodation or business expansion.

Someone acquiring Land Use Rights ("LURs") could, technically, be considered to have acquired a piece of land in Vietnam. However, this is more complicated in practice. In this guide, we will set out some of the most important points investors should take into consideration before entering the Vietnamese real estate market.

2. What is the main legislation relating to real estate ownership?

Real estate ownership in Vietnam is mainly governed by the Civil Code 2015, the Law on Land 2024, the Law on Real Estate Business 2023, the Law on Residential Housing 2023, the Law on Construction 2014, the Law on Enterprises 2020, and the Law on Investment 2020. The general regulations in these laws are elaborated in decrees or resolutions of the Government or decisions of the Prime Minister and circulars of ministries. Examples include Decree No. 96/2024/ND-CP elaborating certain articles of the Law on Real Estate Business 2023, Decree No. 95/2024/ND-CP on guidelines for the Law on Residential Housing 2023, Decree No. 102/2024/ND-CP on guidelines for the Law on Land 2024, and Resolution 18-NQ/TW dated 16 June 2022 on the State's policies regarding land use and management, etc. These new regulations of land, real estate business and residential housing entered into force recently on 01 August 2024 to align with the ongoing development of the real estate market.

3. Have any significant new laws which materially impact real estate investors and lenders come into force since December 2023 or are there any major anticipated new laws which are expected to materially impact them in the

near future?

There are notable new laws which mainly govern the real estate market as follows:

a. The Law on Land 2024

This law includes 16 chapters and 260 articles. This law was issued on 18 January 2024 and came into force on 01 August 2024.

b. The Law on Residential Housing 2023

This law includes 13 chapters and 198 articles. This law was issued on 27 November 2023 and came into force on 01 August 2024.

c. The Law on Real Estate Business 2023

This law includes 10 chapters and 83 articles. This law was issued on 28 November 2023 and came into force on 01 August 2024.

4. How is ownership of real estate proved and are ownership records available for public inspection?

A certificate of LURs, house ownership rights, and other properties attached to the land ("LURC") is a title document required for existing houses and buildings to be made available for use and trade. Besides the LURC, these land parcels, houses, and buildings must also satisfy additional conditions. These include that they are not subject to a conflict or dispute, are not being distrained for the execution of a court judgment over the LUR, and that the land use term has not expired.

The real estate ownership records are not freely accessible to the public in Vietnam. Only specific entities (e.g., government authorities, financial institutions, or persons with a legitimate interest) are permitted to access the records. Individuals seeking information on ownership of residential house (e.g., for a purchase or legal dispute) can submit a request to the local People's Committee or Land Registration Office.¹ Additionally, a national database is being established to allow access to land information by relevant landowners and competent authorities. Other parties may also access this information, provided they have obtained consent from

the management authority.²

Footnote(s):

¹ Article 20 of Decree 20/2024/ND-CP

² Article 166.5 of Law on Land 2024

5. Are there any restrictions on who can own real estate, including ownership by any foreign entities?

Yes. Vietnam places several restrictions on who can own real estate, particularly regarding foreign entities. In general:

Foreign-invested companies can acquire land through the following forms:³

- a. Land lease or land allocation from the State with land levy payment (subject to a land-using project); or
- b. Capital contribution by land use rights.

With regards to residential properties, foreign organizations and individuals are entitled to own residential units in Vietnam in the following circumstances:⁴

- a. Foreign-invested companies investing in residential house construction projects in Vietnam;
- b. Foreign-invested companies, branches, the representative office of a foreign enterprise, foreign funds and foreign bank branches that are licensed to operate in Vietnam; and
- c. Foreigners who can lawfully enter Vietnam and are not entitled to diplomatic or consular privileges and immunities according to the law.

The Law on Residential Housing 2023 sets out restrictions on the maximum number of houses in an apartment building, residential area or a street that foreigners can purchase and own.⁵ For example, the total number of apartments that may be purchased in one building by foreigner is capped at 30% of the total number of apartments in the building. In addition, the ownership term is limited to 50 years for foreign individuals (except those who are married to Vietnamese citizens)⁶, or to the term of the investment registration certificate for foreign organisations.

Footnote(s):

³ Article 42 and 43 of Law on Land 2024

⁴ Article 8 and 17 of Law on Residential Housing 2023

⁵ Article 19 of Law on Residential Housing 2023

⁶ Article 20.2 of Law on Residential Housing 2023

6. What types of proprietary interests in real estate can be created?

In Vietnam, there is no specific legal term for land ownership. By law, land is under the ownership of "the people," with the Government acting as their representative, and managing every aspect of the land.

Instead, individuals and organisations have LURs and ownership rights to buildings and structures on the land. Land users have, for example, the right to transfer, lease, sub-lease, give away, and mortgage their LURs, similar to ownership rights. Therefore, in practice, acquiring LURs could – technically – be considered as acquiring a piece of land in Vietnam.

7. Is ownership of real estate and the buildings on it separate?

Generally, ownership of the real estate and the buildings on it will be registered for the same owner. There are circumstances in which the ownership of real estate and buildings can be registered separately.

For example, if the house owner is not a land user: Land-attached assets can only be granted LURCs if the house owner has a land lease contract, capital contribution, or business cooperation document giving the land user's approval for housing construction. For other, non-residential construction projects, if the project owner is not also the land user, they must have full paperwork proving their ownership of the project and written approval of the land user giving them permission to undertake construction.⁷

Footnote(s):

⁷ Article 148.5(a) of Law on Land 2024

8. What are common ownership structures for ownership of commercial real estate?

In Vietnam, commercial real estate is developed and sold by real estate developers. Commercial real estate can include apartments, villas, shophouses, etc. Those who purchase commercial real estate can register their

ownership over it, the land area, and/or assets attached to the land, subject to their eligibility (i.e., whether they are Vietnamese individuals, foreigners, local companies, foreign-invested companies, etc.). Foreign organizations or foreigners may own commercial housing properties through purchasing, lease-purchasing from developers of housing investment and construction projects, or receipt as gift or inheriting housing investment and construction projects in areas without strict national defense and security requirements in accordance with the laws of Vietnam.⁸

Footnote(s):

⁸ Article 20 of Law on Residential Housing 2023

9. What is the usual legal due diligence process that is undertaken when acquiring commercial real estate?

The usual due diligence should cover critical aspects of the land sale, including legal, technical, financial, and accounting. While there is no universally accepted market standard of legal due diligence when acquiring real estate, purchasers should at least pay attention to the following points:

- a. The legal status, registered owner, the type, and term of title over the real estate;
- b. The legal capacity of the sellers/transferees;
- c. The validity of land documents (i.e., LURC, the decision on land lease, the decision on land allocation of the competent authority, etc.);
- d. The validity of the relevant certificates and permits (i.e., investment/investment registration certificate, construction permit, documents evidencing the building is ready for use, etc.);
- e. Review of the lease/sale and other relevant documentation of third parties;
- f. Legal checks on unsettled encumbrances, mortgage, restrictions, disputes, or conflicts over the real estate;
- g. Land use planning and zoning;
- h. Construction planning and zoning;
- i. Pending claims including any pending or threatened lawsuits, claims, or other actions involving the real estate;
- j. The status of completion of the financial liabilities with respect to the real estate; and
- k. Regulatory and financial obligations arising from acquiring the real estate.

10. What legal issues (if any) are outside the

scope of the usual legal due diligence process on an acquisition of real estate?

The following issues may not be covered by usual legal due diligence on an acquisition of real estate:

- a. Environmental risks and hazards;
- b. Checks on market land price range; and
- c. The history of the land acquisition process.

11. What is the usual process for transfer of real estate, and when does liability pass to the buyer?

Once the conditions for transferring real estate have been satisfied, both buyer and seller could refer to the following steps to conduct the transfer process:

- a. Preparing the draft transfer agreement and relevant documents;
- b. Notarising the transfer agreement at a notary public;
- c. Submitting the notarised transfer agreement along with the transfer application dossier to the land registration authority;
- d. Completing the financial obligations to the transfer by paying all relevant taxes and fees, and;
- e. If all the application dossiers are sufficient and valid, the land registration authority will issue the certificate reflecting the new owner of the LURs for the real estate.

Subject to the terms of the parties' agreement, liability in relation to the real estate could be transferred to the buyer from the signing date of the agreement. However, the buyer only has the legal rights and obligations in relation to the real estate in accordance with laws after obtaining the certificate reflecting the new land user/properties owner on LURC for the real estate.

12. Is it common for real estate transfers to be effected by way of share transfer as well as asset transfer?

Legally speaking, No. A real estate transfer must be in the form of an asset transfer because real estate is a type of asset. A share transfer does not involve or create direct ownership over real estate.

In practice, subject to the parties' agreement and the legal background of the target real estate, it is a common practice that through a share transfer, the share buyers can establish its indirect ownership or control over the real estate owned by the target company.

13. On the sale of freehold interests in land does the benefit of any occupational leases and income derived from such lettings automatically transfer to the buyer?

Yes. The seller shall assign and transfer all of its rights, obligations and liabilities attached to the land to the buyer. The buyer shall enjoy all the rights and benefits and assume, receive the payment and perform all obligations and liabilities of the seller under the contract or agreement for any occupational leases whether accruing prior to (if it is outstanding), on or after the sale of the land.

On the other hand, Clause 2, Article 173 of the Law on Residential Housing 2023 stipulates the right of tenants to continue renting a house until the expiry of the lease contract if ownership of that house is transferred to others. In this case, the new owner of the house is responsible for continuing the obligations of the previous lease contract, unless otherwise agreed by the parties. In accordance with Clause 3, Article 20 of the Law on Real Estate Business 2023, tenants of buildings, or floor areas also have the right to continue renting under contracts with the new landlords if the property changes ownership.

Each type of land user holds a different scope of land use rights, which may vary depending on the transferee's eligibility and the regulatory requirements regarding land use rights compatibility under the **Law on Land 2024**. Therefore, it is essential to review the qualifications of the transferor and transferee before conducting any land transfer to ensure compliance with applicable regulations.

14. What common rights, interests and burdens can be created or attach over real estate and how are these protected?

- **Common rights, interests, and burdens** include LURs; ownership rights to buildings and structures on the land; rights to transfer, lease, sub-lease, give away, or mortgage LURs; obtaining the LURC; entitlement to compensation from land acquisition; entitlement to file a complaint and commence proceedings following any violation of LURs; and the right to mortgage, contribute to, or sell property attached to the land and lease commercial houses on it.

- **How are these protected?**

- a. These are protected through the following legal instruments:
 - i. The relevant regulations to guide and set

principles in the Law on Land 2024, the Law on Real Estate Trading 2023, the Law on Residential Housing 2023, etc.

- ii. Sanctions for illegal acts infringing these rights: Decree No. 123/2024/ND-CP on the administrative sanctions relating to land, the Criminal Code 2015 (amended in 2017), etc.
- b. Remedial action could include petitioning a court or other competent State authority to order the person infringing property rights to return the property, to cease the illegal act hindering the performance of ownership or other rights with respect to the property, and to request compensation for loss and damage.⁹

Footnote(s):

⁹ Article 164.2 of the Civil Code 2015

15. Are split legal and beneficial ownership of real estate (i.e. trust structures) recognised?

Yes, this is recognised in Article 135 of the Law on Land 2024.

Article 135.2 of the Law on Land 2024 states that: *"Where one parcel of land is subject to the mutual land use right of a number of people and there are joint owners of the assets attached to the land, then **each person shall be issued with one certificate of land use right and assets attached to the land**; if the joint users or joint owners so request, a mutual certificate of land use right and assets attached to the land shall be issued and granted to the representative"*.

Article 135.4 of the Law on Land 2023 goes on to state that: *"Where the land use right, or the land use right and ownership of assets attached to land, or the ownership of the assets attached to land is the mutual asset of both husband and wife, then the single land certificate **must state the full name of the husband and the full name of the wife**, except where the husband and wife agree to state the name of either of them as the representative for them both"*.

16. Is public disclosure of the ultimate beneficial owners of real estate required?

Yes. Information about the land user and owner of the assets attached to land is shown on the LURC. The presentation can be found¹⁰:

- a. In the item "1. Adjustment content after issuing the LURC" on page 2 of the LURC if the new owner does

not need a new certificate.

- b. In the item "6. Land user, land-attached assets owner" on page 1 of the LURC if the new owner wishes to have a new certificate.

Footnote(s):

¹⁰ Article 29.2 of Circular 10/2024/TT-BTNMT

17. What are the main taxes associated with real estate ownership and transfer of real estate?

Value Added Tax (VAT), corporate income tax (CIT) or personal income tax (PIT), land use fees, and land use taxes and registration fee.

18. What are common terms of commercial leases and are there regulatory controls on the terms of leases?

- **Some common terms of commercial leases include:**

- Information of the parties;
- Information of the leasing property;
- Lease duration;
- Rental price;
- Payment schedule and payment method;
- Handover conditions;
- Rights and obligations of the contracting parties;
- Commitments of the contracting parties;
- Sub-lease right;
- Lease termination;
- Return of leasing property; and
- The effective date of the agreement.

- **Regulatory controls on the terms of leases?:** Yes, the terms of a lease must comply with the provisions in Sub-section 1 "Assets lease contracts" of Section 5 "Assets lease contracts" and Section 7 "Land use rights contracts" of Chapter XVI "Certain common contracts" in the Civil Code 2015, Article 45.1 of Law on Land 2024 as well as Article 163 of the Law on Residential Housing 2023.

19. What remedies are commonly available for landlords in the event of a tenant breach of a commercial lease?

Upon the tenant's breach of a commercial lease, on a case-by-case basis, the landlord may:

- Unilaterally terminate the commercial lease contract;¹¹
- Retain deposit;¹²

- Ask for monetary penalty;¹³ and
- Ask for compensation based on actual damages caused by the tenant's breach.¹⁴

Footnote(s):

¹¹ Article 428 and 472 of the Civil Code 2015, Article 171 and 172 of Law on Residential Housing 2023 and Article 20.3(g) of Law on Real Estate Business 2023

¹² Article 328 of Civil Code 2015

¹³ Article 418 of Civil Code 2015

¹⁴ Article 419 of Civil Code 2015

20. How are use, planning and zoning restrictions on real estate regulated?

- Foreign individuals can own houses but not land.¹⁵
- Foreign organisations can only own houses to accommodate their employees. They cannot lease or use it as an office or for any other purpose¹⁶.
- If Vietnamese individuals, Vietnamese organisations, overseas Vietnamese, foreign individuals, or foreign organisations investing in Vietnam lease land from the Government under the form of annual payment, the lessee cannot contribute land as equity¹⁷.
- Foreign organisations and foreign individuals are only allowed to purchase, lease-purchase, receive gift, inherit commercial housing properties in housing investment and construction projects in areas without strict national defence and security requirements.

Footnote(s):

¹⁵ Article 4 of the Law on Land 2024

¹⁶ Article 21 Law on Residential Housing 2023

¹⁷ Articles 34 and 37 Law on Land 2024

21. Who can be liable for environmental contamination on real estate?

Any individual or organisation who commits environmental violations on real estate can be held liable.¹⁸

Footnote(s):

¹⁸ For an example of environmental contamination on real estate, see Article 14 of Decree No. 123/2024/ND-CP

22. Are buildings legally required to have their energy performance assessed and in what (if any) situations do minimum energy performance levels need to be met?

Yes. Subject to National Technical Regulation on Energy Efficient Buildings No. QCVN 09:2017/BXD, enclosed with Circular No. 15/2017/TT-BXD, there are mandatory technical requirements when designing, building, or renovating works with a total floor area from 2500 m² or more of the following types or mixtures of works:

- a. Offices;
- b. Hotels;
- c. Hospitals;
- d. Schools;
- e. Trades and services;
- f. Apartments.

23. Is expropriation of real estate possible?

Yes, the Vietnamese Government can expropriate land under the regulations and procedures prescribed by Vietnamese law. The Government can decide to expropriate land in a range of circumstances. These include expropriation for national security and defence, expropriation due to violations of Vietnamese laws on land, expropriation as a result of the voluntary return of land by the land user, etc.

24. Is it possible to create mortgages over real estate and how are these protected and enforced?

Yes, real estate in Vietnam can be mortgaged. However, it is important to note that foreigners cannot take out a mortgage over real estate in Vietnam. Mortgages will be protected and enforced by courts and competent authorities through a court litigation process.

25. Are there material registration costs associated with the creation of mortgages over real estate?

Yes, these are at the discretion of local authorities. Normally, the legitimate fee of VND 80,000 (equivalent to USD 3.5) would be applied for each case.

26. Is it possible to create a trust structure for mortgage security over real estate?

Vietnam does not yet have a concept of 'trust' defined in law. However, in practice, the trust structure for mortgage security over real estate has been commercially arranged between foreign lenders (i.e. foreign banks or foreign entities), local banks in Vietnam, and borrowers. In this structure, the local bank will receive the mortgage security over the real estate from the borrower. If there is a mortgage security enforcement event, the proceeds of the enforcement will be used to repay the borrower's foreign loan to the foreign lender.

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